

In the Matter of License No. 100516

Issued to: LEONARD C. SMITH

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

586

LEONARD C. SMITH

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 19 June, 1951, an Examiner of the United States Coast Guard at San Francisco, California, revoked License No. 100516 issued to Leonard C. Smith upon finding him guilty of negligence based upon a single specification divided into four parts which alleges in substance that while serving as Master on board the American SS MARY LUCKENBACH under authority of the document above described, on or about 25 August, 1950, while said vessel was proceeding from the port of San Francisco, he did:

- A. Navigate his vessel at an excessive speed in a fog;
- B. That such excessive speed contributed to a collision between his vessel and the U. S. Naval Hospital Ship BENEVOLENCE;
- C. This collision resulted in the sinking of the BENEVOLENCE;
- D. With consequent loss of life and property.

At the commencement of the hearing, on 20 September, 1950, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection. Counsel requested that the four parts of the specification be treated separately as to their proof. The Examiner and the Investigating Officer agreed to this arrangement; and the Examiner stated that proof of parts C and D would depend at least partially upon the prior proof of parts A and B. Appellant entered a plea of "not guilty" to the charge and the entire specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and counsel reserved his right to make an opening statement at a later time. The hearing was then continued to await the transcription of the record of proceedings before the Marine Board of Investigation which had been convened to inquire into the collision. When the hearing was reconvened in May, 1951, it was agreed by the parties that the case be submitted solely on the basis of the record of the latter investigation with the exception of Appellant's testimony and diagrams, and the findings and conclusions of the Board of Investigation. This investigation record includes the testimony of numerous persons from both ships and many documentary exhibits.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel, the Examiner announced his findings and concluded that the charge had been proved by proof of part of the specification. He then entered the order revoking Appellant's License No. 100516 and all other licenses issued to this Appellant except that as Third Mate; and it was further provided that a Third Mate's license be issued to Appellant and suspended for one year from 19 June, 1951 - four months' outright suspension and eight months' probationary suspension for eighteen months from 19 June, 1951.

From that order, this appeal has been taken. It is an argument directed against part A of the specification which alleges that Appellant navigated his vessel at an excessive speed in fog. It is stated that the Examiner's drastic order is based on the erroneous conclusion that the LUCKENBACH was proceeding at an immoderate speed when the whistle of the BENEVOLENCE was first heard.

Specifically, Appellant contends that proof of excessive or immoderate speed in fog is dependent upon whether the LUCKENBACH could have been stopped dead in the water in one-half the distance of visibility (Ninth Circuit Court of Appeals cases cited) or simply within the range of visibility (Second Circuit Court of Appeals cases cited); that this test depends upon the determination of three factors: maximum visibility at the time of sighting the BENEVOLENCE, the speed of the LUCKENBACH through the water at this time, and the reversing ability of the LUCKENBACH; and that judged by these criteria, the conclusion of the Examiner with respect to part A of the specification is not supported by his findings or the evidence in the record.

Appellant has raised no objection to the Examiner's findings that the visibility from the LUCKENBACH was approximately 1500 feet after passing the Golden Gate Bridge until the time of the collision (Finding No. 4); and that from the time she passed under the Golden Gate Bridge until the whistle of the BENEVOLENCE was heard, the LUCKENBACH was making 8.82 knots through the water (Finding No. 5). But it is claimed that since there is no finding concerning the reversing ability of the vessel at a speed of slightly under 9 knots and because there is no evidence in the record with respect to this third essential factor, the conclusion of immoderate speed is pure speculation. This conclusion is said to be erroneous particularly since it was reached even though the higher speed of the BENEVOLENCE caused her to cover more than one-half of the distance of visibility between the two vessels by the time of the impact and the Examiner, in effect, concluded that the LUCKENBACH was nearly dead in the water when the accident occurred after her engines had been going full speed astern for three minutes before the collision.

Appellant also urges that the order imposed by the Examiner is excessive and unjustified because he gave weight to the sinking of the BENEVOLENCE and the loss of life although he found that the only part of the specification proved was that the LUCKENBACH was proceeding at an immoderate speed in fog at a time preceding the sighting of the BENEVOLENCE; and he found that there was no causal connection between Appellant's initial negligence and the subsequent disaster. It is pointed out that as a result of the EASTWIND - GULFSTREAM collision, the officers of the two vessels received comparatively minute penalties; and that there was a much less severe penalty imposed upon the Captain of the BENEVOLENCE than upon the Appellant herein

even though the negligence of the BENEVOLENCE greatly exceeded that of the LUCKENBACH.

In conclusion, it is submitted that the Examiner's action reflects an unstable emotional reaction influenced by public excitement resulting from the unfortunate collision and the nationwide publicity it was given; that an order tantamount to the maximum penalty was imposed without support in the record and simply to use Appellant as an example for the shipping industry; and that, therefore, the charge of negligence should be dismissed or the order considerably mitigated.

APPEARANCES: Messrs. Lillick, Geary, Olson, Adams and Charles, of San Francisco, by Joseph J. Geary and Edward D. Ransom, Esquires, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

#### FINDINGS OF FACT

On 25 August, 1950, Appellant was serving as Master on board the American SS MARY LUCKENBACH and acting under authority of his License No. 100516 while the ship was outbound from the port of San Francisco enroute to Philadelphia, Pennsylvania.

On this date, the LUCKENBACH collided with the inbound USNHS BENEVOLENCE off the entrance to San Francisco Bay in the vicinity of the main ship channel which is marked with four pairs of buoys and extends for a distance of approximately two miles in a generally easterly direction to within slightly less than six miles of the Golden Gate Bridge. The width of the marked channel is about 800 yards.

The MARY LUCKENBACH, Official No. 254012, is a C-2 type intercostal cargo vessel of 8162 gross tons, 441.2 feet in length, 63.2 feet in breadth, and 36.7 feet in depth. She is powered by a single screw gear turbine drive of 6,000 shaft horsepower under maximum steam pressure of 450 pounds. Full speed is approximately 15 knots (75-80 RPM). The total persons on board numbered 45.

The BENEVOLENCE (AH-13) was a modified C-4 type hospital ship of 15,450 tons displacement, 520 feet in length, 71.5 feet in breadth, and 43.5 feet in depth. She was powered by a General Electric turbine with Falk reduction gear, developing 8,500 shaft horsepower under maximum steam pressure of 440 pounds driving a single screw. Her standard speed was 15.5 knots (88 RPM). On 25 August, 1950, the BENEVOLENCE was engaged in acceptance trials preparatory to her anticipated transfer from the Navy to the Military Sea Transportation Service. Consequently, there were 528 persons on board including the regular Navy crew, the prospective MSTs Master and crew, Navy medical personnel and shipyard workmen.

The LUCKENBACH got underway from the Howard Terminal, Oakland, California, at 1521 ship's time on 25 August, 1950. She was fully loaded with 10,000 tons of general cargo and her draft was 27 feet 4 inches forward, 29 feet 7 inches aft. The pilot left the ship at 1533 and Appellant remained at the conn from then until the time of collision. The LUCKENBACH maneuvered at

various speeds until 1610 when speed was increased to full ahead of 15 knots.

At 1642 ship's time, the LUCKENBACH passed under the center of the Golden Gate Bridge and proceeded to sea on course 246 degrees true, speed 15 knots. This course made good would have carried her to the starboard side of the main ship channel with buoy No. 7 close aboard her starboard. Her speed over the ground was increased by a favorable 1.5 knot current which was setting in a southwesterly direction.

Just after passing the Golden Gate Bridge, fog was encountered and the distance of visibility from the LUCKENBACH decreased gradually as the weather became thicker. Fog signals were sounded every minute until between one and two minutes before the collision with the BENEVOLENCE.

The radar had been secured because none of the crew were able to make the minor underway adjustments which were necessary before it would focus properly. The Junior Third Mate had attempted to make these adjustments without success.

Subsequent events disclosed that the clocks on the bridge of the LUCKENBACH were approximately five minutes ahead of those on the BENEVOLENCE. Assuming that the clocks on the BENEVOLENCE were accurate, the corrected time at which the LUCKENBACH passed under the Golden Gate Bridge was 1637.

The following persons were on the bridge of the LUCKENBACH from 1642 ship's time until the collision occurred: Appellant, Second Mate, Third Mate, Junior Third Mate, and a helmsman. A lookout was posted in the eyes of the ship at all times after the fog set in. At the time of the collision, the weather was still foggy, there was a slight breeze and the sea was calm.

At 1658 ship's time (corrected to 1653), Appellant heard the fog signal of the BENEVOLENCE up ahead and he immediately ordered "stop" on the engines. A few seconds later, he ordered "full astern" and this order was repeated on the telegraph to indicate an emergency. At 1659 (corrected to 1654), the bow wave of the BENEVOLENCE and then the ship itself came into view slightly on the port bow of the LUCKENBACH at a distance of approximately 1500 to 2000 feet. Appellant ordered "hard right rudder" and four blasts of the whistle were sounded as a danger signal. At about this same time, the sounding of the siren on the BENEVOLENCE was heard on the bridge of the LUCKENBACH. The engines of the LUCKENBACH were going full astern but she was making way through the water when her port bow struck the BENEVOLENCE on the port side of her forecastle at an angle of about fifteen degrees. The impact was so great that both ships heeled to starboard as they bounced apart. A second less severe impact occurred when the LUCKENBACH's port side came into contact with the port side of the BENEVOLENCE alongside her bridge structure. The collision took place at 1700 LUCKENBACH time (corrected to 1655) and at approximately 37° 46' 56" North Latitude, 122° 34' 00" West Longitude. Immediately after the first impact, Appellant ordered "hard left rudder." The forward motion of both ships continued until after the LUCKENBACH had passed astern of the BENEVOLENCE and they had passed out of sight of one another. The LUCKENBACH's engines continued backing full until she anchored at

1710 (corrected to 1705).

The crew of the LUCKENBACH assisted in the rescue operations when Appellant became aware of the fact that the BENEVOLENCE had sunk. There were no casualties on the LUCKENBACH and she later proceeded into San Francisco harbor without assistance despite damage to her port side and with her forepeak flooded.

The BENEVOLENCE was conducting the acceptance trials in a lightly loaded condition drawing 19 feet forward and 23 feet aft. She had rounded the San Francisco Lightship and was proceeding up the marked channel towards the harbor entrance until five minutes prior to the time of collision. The Commanding Officer was on the bridge but a civilian pilot was conning the ship. Also on the bridge were the ship's Navigator, the prospective MSTS Master, another civilian pilot, the helmsman, a radar operator, and other personnel. A lookout was posted on the forecastle head and fog signals were sounded every minute until about two minutes before the accident.

Although the surface search radar was operated continuously on the 15,000 yard scale, there is no testimony as to why the image of the LUCKENBACH was not seen on the scope except a statement that atmospheric conditions might have caused a blank spot.

At 1640 ship's time, the BENEVOLENCE was making standard speed of 15.5 knots (88 RPM) through the water when she changed course to 071 degrees true approaching the main ship channel. Buoy No. 2 was approximately 100 yards abeam to starboard at 1641 and speed was changed to 16 knots (91 RPM) three minutes later. When buoy No. 8 was about 100 yards abeam to starboard at 1650, her course was changed to 066 degrees true. The ship was steaming against a current of 1.5 knots.

At 1652 after steadying on the new course, the fog signal of the LUCKENBACH was heard by the conning pilot from approximately dead ahead and he ordered "all stop" on the engines. Almost two minutes later, another blast was heard as the bow wave of the LUCKENBACH was seen through the fog dead ahead at a distance of about 2,000 feet. The pilot ordered "right full rudder," and "two-thirds speed ahead." The LUCKENBACH was sighted immediately thereafter at 1654 and the collision alarm was sounded on the siren of the BENEVOLENCE a few seconds later. She had commenced swinging to the right when the collision occurred at 1655. The pilot then ordered "all stop" while the two-thirds bell was still being answered.

The plates were ripped off the BENEVOLENCE and she began to ship water through a hole of about 300 square feet. The rudder was shifted as a port list increased rapidly and the ship commenced going down by the head. The port anchor was dropped at 1710. The vessel slowly rolled over to a full 90 degree list and sank at 1738 located approximately at 37° 47' 05" North Latitude and 122° 33' 07" West Longitude, bearing 253 degrees true from Mile Rocks Light at a distance of 4200 yards. The line of the keel at the time of sinking (bearing approximately seven-tenths of a mile to the eastward of the scene of the accident) was 058 degrees true.

Twenty-three lives were lost as a result of the collision. The conning pilot was unable to

testify since he did not survive.

There is no record of any prior disciplinary action having been taken against Appellant.

### OPINION

The Examiner's decision, in effect, found proved only Part A of the specification. Therefore, it would be inappropriate for me to discuss or to express any opinion on the Examiner's disposition of Parts B, C and D of the specification. I desire to emphasize, however, that here as in all cases of proceedings against merchant mariners' documents under R.S. 4450, the Examiner's conclusions reflect his own views alone upon the evidence before him, and in no way are determinative of any questions which might arise in the civil litigation of this collision.

At the hearing, Appellant consistently expressed the view that proof of any one of the four parts of the specification would be sufficient to prove the charge of negligence. In this appeal, it is stated that Part A of the specification was found proved in no other respect than that Appellant was navigating his vessel at an excessive speed in a fog at the time when the fog signal of the BENEVOLENCE was first heard on the LUCKENBACH.

These proceedings are remedial in nature and the primary purpose of them is to protect lives and property at sea against actual and potential danger rather than to punish persons for criminal negligence or to determine who shall bear the burden of the losses resulting from a collision. Therefore, it is not necessary in this case to find that Appellant's negligence was at least partially to blame for the collision, sinking and loss of life, in order to find that he was negligent in proceeding at an excessive speed at some time prior to the collision.

This proceeding is not an attempt to forecast the outcome of civil litigation which will determine the issue of damages based upon which vessel or vessels were guilty of fault contributing to the collision; nor is it an attempt to start a new body of law by ignoring the decisions of the courts. Judicial precedents set by the cases on civil litigation will be followed to the extent that they are applicable, but it follows from the objective of such litigation that the court decisions will not control the determination as to the issue of negligence herein because prior excessive speed is not necessarily a fault contributing to the collision. The Ludvig Holberg (1895), 157 U.S. 60; U.S. v. Steffens (CCA 2, 1929), 32 F2d 206. The latter case stated that the earlier speed in the fog of one ship had been a fault but that it must have been run off prior to the development of the collision situation and, therefore, it did not contribute to the collision. Another distinction, as pointed out by Appellant, is that under the court decisions the critical time, with respect to the ability of a ship to stop in her share of the visible distance, is when another ship is sighted. But here we are concerned with the time when the fog signal of the BENEVOLENCE was heard on the LUCKENBACH.

The findings of fact which pertain directly to those parts of the specification, other than that part which alleges excessive speed in fog, have been included to indicate the potential danger caused by the excessive speed of the LUCKENBACH. The details concerning the location and speeds of the two ships at different times are necessary in order to determine, on the basis of what actually

happened a short time later and under the same circumstances, whether the LUCKENBACH could have stopped in her share of the visible distance at the time she heard the whistle of the BENEVOLENCE. The evidence as to the time between when the LUCKENBACH reversed her engines and the BENEVOLENCE was sighted is pertinent in some degree as to whether the LUCKENBACH's speed was excessive at the former time; and the evidence pertaining to the visibility at the time of sighting the BENEVOLENCE is useful to determine the visibility shortly before that time.

Before discussing the merits of this case, I would like to note that the evidence before the Examiner consisted entirely of the testimony and exhibits submitted before the Marine Board of Investigation. Since the findings of the Examiner are based upon a review of the same cold record which comes before me on this appeal, I am not as limited in making an independent determination as to the credibility of witnesses as in those cases where the Examiner has seen and heard the witnesses testify. In addition, there is considerable corroborating evidence concerning some findings which leads to the logical conclusion that some other findings in the sequence of events cannot be sustained.

This appeal is limited to a determination as to whether Appellant was navigating the LUCKENBACH at an excessive speed in fog when the fog signal of the BENEVOLENCE was heard. The result depends upon the circumstances of the individual case, the applicable rule-of-thumb test as to the visible distance, and the three factors mentioned by Appellant: the visibility, speed and reversing ability of the LUCKENBACH at the time in question.

What constitutes immoderate speed in a fog depends upon all the surrounding circumstances and conditions which assist in deciding whether the speed was negligent or prudent. Hence, the question cannot be resolved merely by applying mechanical tests. Some factors in determining whether the speed is excessive are the density of the fog, the degree of accuracy with which the ship's position can be determined, the likelihood of meeting other vessels, the presence of any currents, the compliance of the other vessel with the rules of navigation, and established standards of seamanship which affect a vessel's safety. Prudent speed varies inversely with the probability of meeting other vessels. The LUCKENBACH was departing from San Francisco which is well-known to be one of the busiest ports in the United States. The heavy volume of commercial traffic known to traverse the waters in the vicinity of the Golden Gate Bridge, the 800 yards wide marked channel and the open water between the bridge and the channel, makes utterly superfluous any extended discussion of the problems any navigator may expect to encounter there. The variety of vessel types which he might meet is demonstrated by the presence of the BENEVOLENCE on the occasion in question. The fog was an additional warning to Appellant to navigate his vessel at a low speed. Nevertheless, the LUCKENBACH headed for the marked channel while she was heavily loaded with 10,000 tons of cargo, drawing 27 feet 4 inches forward and 29 feet 7 inches aft, and the uninterrupted forward motion of the ship was accelerated by a favorable current.

There are mechanical tests which are also applied by the courts to determine whether a given rate of speed of a ship is moderate or excessive in view of the particular circumstances of the case. It has been held that a vessel shall not proceed at a speed at which she cannot be stopped dead in the

water in one-half the distance of visibility ahead of her (The Chicago - Silver Palm (CCA9, 1937), 94 F.2d 754, cert. den. 304 U.S. 576); and also that a vessel must be able to stop before colliding with another vessel which has been sighted, provided such approaching vessel is going at a moderate speed. (The Umbria (1897), 166 U.S. 404; The Nacoochee (1890), 137 U.S. 330). The significance of the test set forth in the latter two cases is substantially the same as that enumerated in the former case, when applied to two vessels which are approximately head and head when they sight each other. According to either test, each vessel would then be required to be able to stop within one-half of the visible distance; and under the circumstances of this case, that is the test which is applicable.

I have found that the BENEVOLENCE was sighted at a range of approximately 1500 to 2000 feet and Appellant raises no objection to limiting this finding to 2000 feet. Since there was no substantial change in the density of the fog prior to sighting the other ship, the distance in which the LUCKENBACH was required to have been able to stop (when she heard the fog signal of the BENEVOLENCE a minute before sighting her) was a maximum of 1000 feet. The latter figure will be considered to have been one-half the distance of visibility even though it would be more appropriate to use the lesser distance of 750 feet in view of the surrounding circumstances such as the expectancy of meeting other vessels in this vicinity.

I have also found that the LUCKENBACH passed the Golden Gate Bridge at 1642 ship's time (see Exhibits 6 and 7) and that the clocks on the LUCKENBACH's bridge were approximately five minutes ahead of the BENEVOLENCE clocks. The latter finding is supported by the mutually corroborating testimony of the witnesses from both ships which can lead only to the conclusion that the collision occurred at 1655 BENEVOLENCE time and 1700 LUCKENBACH time.

There is no disagreement with the BENEVOLENCE time of 1655 and this is supported by the entry made in the Quartermaster's Log Book of the BENEVOLENCE (Exhibit 24) at the time of the first impact (R. 653) as well as the statement of the Captain of the BENEVOLENCE in his report of the accident (Exhibit 19) and the testimony of the Navigator (R. 536). There is also testimony by the Captain of the BENEVOLENCE that the conning pilot heard the fog whistle of the LUCKENBACH at 1652 (R. 381); and by the Captain and Navigator of the BENEVOLENCE that the order to stop all engines was given at 1652 (R. 381, 555). The testimony of the Chief Engineer corroborates the time of stopping at 1652. Although he testified that the stop bell was received in the engineroom at 1650 (R. 743), it is evident that the source of his time was two minutes behind the bridge time because he also testified that the stop bell after the collision was received at 1653 1/2 (R. 744). The testimony of the Captain and Navigator discloses that at 1654 they heard the LUCKENBACH's fog signal and that the order "right full rudder" was given as the bow wave of the LUCKENBACH came into sight (R. 386, R. 536-7). The prospective MSTs Second Officer testified that the two-thirds ahead order was given seconds before the collision occurred at 1655 (R. 821, 831). This agrees with the testimony of the Chief Engineer that the two-thirds ahead bell was received two minutes after the stop bell (R. 744) and that the ahead bell was still being answered when the collision occurred (R. 745, 762). The Captain stated that the collision alarm was sounded on the siren after sighting the LUCKENBACH and prior to the impact (Exhibit 19). This must have been at 1654 BENEVOLENCE time. The evidence indicates that the BENEVOLENCE sighted the LUCKENBACH slightly earlier than the BENEVOLENCE was seen



from the LUCKENBACH.

Turning to the evidence from the LUCKENBACH, the Deck Bell Book (Exhibit 7) reads that at 1658 the engines were stopped and then reversed after one blast was heard ahead, at 1659 the vessel was sighted, and at 1710 the engines were stopped and the ship was anchored. The testimony of all three officers on the bridge supports the entries as to 1658 and 1659 (R. 133, 159, 240). The gist of their testimony is that all of these events as well as the hard right rudder order occurred within a minute and a half of each other. The Third Mate also testified that the danger signal was sounded on the LUCKENBACH immediately after the full astern bell (R. 244); the Junior Third Mate testified that he heard the siren on the BENEVOLENCE just before the collision (R. 141); and the Chief Mate (who was on deck) testified that he heard the danger signal and the siren, in that order, a very few seconds before the collision (R. 9, 10). This testimony of the LUCKENBACH witnesses, interwoven in itself and together with the testimony from the Captain of the BENEVOLENCE as to when the siren was sounded, is very substantial evidence to support the proposition that the ship's time of the LUCKENBACH was 1700 and not 1702 when the collision took place.

The rough Deck Log of the LUCKENBACH states that the collision was at 1702 but it is admitted that these entries were made after the vessel had anchored (R. 168) and were copied from the Deck Bell Book (R. 167). The latter does not contain any entry as to when the collision occurred. Thus, the weight to be given the 1702 entry in the rough Deck Log is insignificant in the face of the overwhelming evidence to the contrary. The Engineroom Bell Book entry that a heavy jar was felt at 1702 (Exhibit 17) is comparatively unimpressive since other entries parallel to ones in the Deck Bell Book show that the times recorded in the former are ahead of those in the latter.

While discussing the value of the log entries, it is important to note that the "Standby" (S.B.E.) entry in the Deck Bell Book was squeezed in at the end of the 1642 entry and it definitely was written with a pencil which made a darker impression on the paper than the rest of the entry. The Second Mate explained this by testifying that he made the complete entry at 1642 but sharpened the pencil before entering "S.B.E." (R. 173). But even this does not explain why the time of 1642 ("442") also was evidently written with a darker pencil. With respect to the 1642 entry in the Engineroom Bell Book ("ST.BY 442"), its credibility is seriously reflected upon because it was made by an arrow insertion between two other entries and it was admittedly made after the ship was anchored at 1710. In view of the suspicion cast upon some of the log entries, I am convinced that either the "Standby" order was not given, it was not answered by the engine room, or the order did not call for a reduction in speed. This is further made clear by the average speed of the LUCKENBACH from the Golden Gate Bridge to the point of the accident.

Reverting to the discussion concerning the time of the collision, I think that the evidence referred to above substantiates my findings as to the time of the collision and the events which took place on each ship within the period of three minutes before the collision after the BENEVOLENCE first heard the fog signal of the LUCKENBACH. In accordance with the lack of support in the record, it is very improbable from a logical viewpoint that the Examiner's findings of fact were accurate which stated both that the engines of the LUCKENBACH commenced backing and the

BENEVOLENCE had her rudder right full for three minutes before the collision. Under such circumstances, it is difficult to comprehend how the collision could have occurred especially if the LUCKENBACH had been proceeding at the claimed speed of 8.82 knots through the water and if she was nearly dead in the water at the time of the collision as contended by Appellant. And if the LUCKENBACH heard the fog signal of the BENEVOLENCE four minutes and again three minutes before the collision as found by the Examiner, why was the signal not heard at any time during the next three minutes if the collision was not until the latter time?

On the basis of my findings, the LUCKENBACH was required to have been able to stop dead in the water in 1000 feet and in the one minute in which she sighted the BENEVOLENCE, unless it appears that the BENEVOLENCE used up more than her share of the visible distance.

In fixing the point of the collision, considerable reliance has been placed upon the statements of the Captain and Navigator of the BENEVOLENCE as to her position with respect to different buoys at various times while passing through the marked channel. This evidence supports the findings that buoy No. 2 was close abeam to starboard at 1641, speed was increased from 15.5 to 16 knots at 1644, and buoy No. 8 was about 100 yards abeam to starboard at 1650. This gave her an average speed of 14.3 knots over the ground for the 4300 yards covered between buoys No. 2 and 8. Assuming that it took three minutes to increase speed, then the speed made good would be an average of the two different speeds of 15.5 and 16 knots, thus indicating that the current was retarding her progress to the extent of 1.45 knots. After her last fixed position at 1650, the BENEVOLENCE steamed for two minutes at 14.5 knots over the ground, two minutes with her engines stopped and one minute at two-thirds ahead. Since these speeds carried her about a mile farther along her course of 066 degrees true, the collision took place at about 37°46'56" North Latitude, 122°34'00" West Longitude. The conclusively determined position where the BENEVOLENCE sunk approximately seven-tenths of a mile to the eastward of this estimated point of collision lends support to the accuracy of this estimate. The fix of the BENEVOLENCE at 1650 is considered to be far more accurate in determining the location of the collision than the last known position of the LUCKENBACH when she passed the Golden Gate Bridge.

The distance from the center of the Golden Gate Bridge to the scene of the accident is about 4.85 miles. Having determined the time of the collision as 1700 LUCKENBACH time and accepting the log entry that she passed under the bridge at 1642 ship's time, the elapsed time between the two points was 18 minutes and her average speed over the ground was slightly in excess of 16 knots. Since the full astern order was given about 16 minutes after she passed the bridge and when the LUCKENBACH was an estimated distance of 2500 to 3000 feet from the position of the collision, her average speed over the ground during those 16 minutes was about 16.5 knots. Allowing for a current of 1.5 knots, her speed through the water was her normal full speed of 15 knots. Hence, the evidence cannot be accepted that her speed was reduced considerably by the order to "Standby" the engines after passing the Golden Gate Bridge. In fact, it is clearly established by the evidence that the LUCKENBACH continued on into the fog without reducing her speed at any time until after the fog signal of the BENEVOLENCE was heard two minutes before the collision. The southwesterly current accounts for the fact that this placed the LUCKENBACH about 700 yards to the south of her dead reckoning track.

The lightly loaded BENEVOLENCE had been proceeding at the rate of 16 knots through the water but her engines had been stopped for two minutes before she sighted the LUCKENBACH and went two-thirds ahead. Since the LUCKENBACH had been moving through the water at 15 knots in a heavily loaded condition, she would have reacted more slowly than the other ship to comparable speed changes. Similarly, I do not think that the reversing of the LUCKENBACH's engines about two minutes before the collision retarded the speed of the ship to a greater extent than the engine changes on the BENEVOLENCE affected her speed through the water. Therefore, the LUCKENBACH covered approximately her share of the visible distance after sighting the BENEVOLENCE at 1654 and Appellant cannot blame his failure to stop the LUCKENBACH on the actions of the other ship. Consequently, the issue herein is resolved into a determination as to whether the LUCKENBACH could have been stopped dead in the water from her speed of 15 knots in the distance of 1000 feet at 1653 when the fog signal of the BENEVOLENCE was first heard.

With respect to the reversing ability of the LUCKENBACH, there is no testimony by the LUCKENBACH witnesses that their ship was dead in the water at the time of the collision. On the other hand, there is very definite testimony by the Captain and Navigator of the BENEVOLENCE that even before they sighted the ship, they saw the bow wave caused by the stem of the LUCKENBACH cutting through the water (R. 466, 538). The Captain, the observing civilian pilot and the prospective MSTs Second Officer estimated, respectively, that the speed of the LUCKENBACH was 15 knots (R. 466), that she was making way through the water when she passed astern of the BENEVOLENCE (R. 719), and that the LUCKENBACH was going full ahead (R. 833). The Chief Mate of the LUCKENBACH testified that he could feel the vibration of the engines going astern for only about half a minute prior to the accident; and it is admitted that the LUCKENBACH did not anchor until about ten minutes later and that her engines were going full astern during this time. In the absence of strong evidence to the contrary, this testimony is sufficient to support the finding that the LUCKENBACH still had forward way on at the time of impact.

### CONCLUSION

It has been established by substantial evidence that the LUCKENBACH did not stop in her share of the visible distance between 1654 and the collision at 1655. A fortiori, she could not have stopped in the required distance after 1653 when the fog signal of the BENEVOLENCE was heard since the engines of the LUCKENBACH were not going astern until shortly after that time. Since the speed of the LUCKENBACH was excessive at 1654 when she sighted the BENEVOLENCE and her engines had been going full astern for about a minute at that time, it is an inescapable conclusion that she was traveling at an excessive speed in fog at 1653. The expectation of meeting other vessels in this area increased the normal duty of Appellant to reduce the speed of his ship in the prevailing fog. But because of Appellant's otherwise clear record, the order of the Examiner dated 19 June, 1951, is modified to read as follows:

### ORDER

That License No. 100516, and all other licenses, certificates of service and merchant mariner's documents issued to Leonard C. Smith, are suspended for a period of six (6) months. The

last four (4) months of this suspension shall not be effective provided no further charges are proved against you under 46 United States Code 239 (R.S. 4450, as amended) for acts committed within twelve (12) months of the expiration of the two (2) months outright suspension.

As so MODIFIED, the Examiner's Order is AFFIRMED.

A. C. Richmond  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D. C., this 28th day of November, 1952.